NO. 45258-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

ROBERT J WALLS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-00973-1

BRIEF OF RESPONDENT

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Robert Walls (hereafter 'Walls') was charged by Amended Information with one count of Tampering with a Witness, Domestic Violence, three counts of Domestic Violence Court Order Violation, one count of Identity Theft in the Second Degree, Domestic Violence, and one count of Assault in the Fourth Degree, Domestic Violence. CP 27-28. Walls was convicted by a jury of Identity Theft in the Second Degree, and three counts of Domestic Violence Court Order Violation. CP 106, 1077, 109, 110. The jury returned a special verdict that Walls and the victim of all the counts were family or household members. CP 111.

At sentencing on this matter, Walls' offender score was contested. The State argued Walls had an offender score of 3 for the Identity Theft in the Second Degree conviction as the three Domestic Violence Court Order Violations each counted as a point pursuant to RCW 9.94A.525(21). Sent RP 3-5.[1] At sentencing, Walls argued that his offender score should be 0

[1] The Verbatim Report of Proceedings consists of five volumes containing the report of proceedings for multiple pretrial hearings, three days of a jury trial and sentencing. The fifth volume, the sentencing hearing, is not sequentially numbered, but restarts at page 1.

as the definition of 'domestic violence' under RCW 9.94A.030(20) includes the word "and" meaning for an offense to count as a point it must meet the definitions of both RCW 10.99.020 and 26.50.010. Sent RP 7-10; CP 113-19.

The trial court found the three Domestic Violence Court Order Violations each counted as a point when calculating Walls' offender score for the Identity Theft in the Second Degree conviction. CP 145; Sent RP 13. The trial court sentenced Walls within the standard range given his offender score of 3. CP 146.

C. ARGUMENT

I. THE TRIAL COURT PROPERLY CALCULATED WALLS' OFFENDER SCORE

Walls argues the trial court miscalculated his offender score by including other current domestic violence offenses pursuant to RCW 9.94A.525(21) because his conviction was not for a crime which falls under the statutory definition of "domestic violence" as detailed in RCW 10.99 *and* RCW 26.50. Walls' interpretation of the statute as requiring any domestic violence crime to fulfil the criteria of *both* RCW 10.99 and RCW

The State refers to the sentencing volume of the report of proceedings as "Sent RP [page number]."

26.50 is erroneous. The trial court properly calculated Walls' offender score and his sentence should be affirmed.

Walls argues the trial court improperly interpreted the definition of 'domestic violence' under RCW 9.94A.030(20). Statutory interpretation is a question of law which is reviewed de novo. *State v. Votava*, 149 Wn.2d 178, 183, 66 P.3d 1050 (2003). RCW 9.94A.525(21) provides for special scoring of domestic violence offenses in a defendant's offender score if he or she is currently facing sentencing on a felony domestic violence offense, "where domestic violence as defined in RCW 9.94A.030 was plead and proven...." RCW 9.94A.525(21). The definition of "domestic violence" in RCW 9.94A.030(20) reads as follows:

> 'Domestic violence' has the same meaning as defined in RCW 10.99.020 and 26.50.010.

RCW 9.94A.030(20). Walls argues this definition requires that for any conviction to be scored as a repetitive domestic violence offense under RCW 9.94A.525(21) that it meet both definitions of domestic violence under RCW 10.99 and RCW 26.50, not either. This argument is flawed in its analysis of statutory construction.

"If the statute is clear on its face, its meaning will be procured from the plain language of the statute." *State v. Beaver*, 148 Wn.2d 338, 344-45, 60 P.3d 586 (2002). The first step in a statutory construction

analysis is to look at the plain language of the statute. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). If by reading the text of the statute involved, the language is unambiguous, a reviewing court must rely solely on the statutory language. *Id.* (citing *State v. Avery*, 103 Wn. App. 527, 532, 13 P.3d 226 (2000)). If the statutory language is amenable to more than one interpretation, it may be deemed ambiguous and the courts should look to legislative history, principles of statutory construction, and relevant case law to provide guidance in construing the meaning of an ambiguous statute. *Roggenkamp*, 153 Wn.2d at 621 (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001) and *Fraternal Order of Eagles, Tenine Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 243, 59 P.3d 655 (2002)).

In interpreting a statute, a court need not attempt to "discern any ambiguity by imagining a variety of alternative interpretations." *In re Pers. Restraint of Washington*, 125 Wn. App. 506, 509, 106 P.3d 763 (2004) (quoting *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 608, 998 P.2d 884 (2000)). Further, "statutes should not be interpreted so as to render any portion meaningless, superfluous or questionable." *State v. Winkle,* 159 Wn. App. 323, 328, 245 P.3d 249 (2011) (citing *Addleman v. Bd. Of Prison Terms*, 107 Wn.2d 503, 510, 730 P.2d 1327 (1986)). Words within a statute should not be read in isolation,

but rather in context with those associated with it. *Roggenkamp*, 153 Wn.2d at 623 (citing *State v. Jackson*, 137 Wn.2d 712, 729, 976 P.2d 1229 (1999)). And statutory provisions must be read together with other provisions in order to determine the legislative intent underlying the statutory scheme. *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000) (citing *In re Estate of Kerr,* 134 Wn.2d 328, 336, 949 P.2d 810 (1998)).

Walls argues that the word "and" as used in RCW 9.94A.030(20) requires that a conviction now meet some hybrid definition of "domestic violence" that would be created by combining the definitions found in RCW 10.99.020 and RCW 26.50.010. Walls' argument is incorrectly premised on a narrow interpretation of the word "and." A plain reading of the statutory language of RCW 9.94A.030(2) simply means that "domestic violence" is defined the same way that it is in RCW 10.99.020 and that it also is defined the same way it is in RCW 26.50.010.

The flaw in Walls' argument that the legislature's use of the word "and" in this context requires the State meet both definitions of domestic violence in RCW 10.99.020 and 26.50.010 is that our Courts have routinely recognized that the word "and" is not limited to this type of narrow definition. Adopting this argument would lead to absurd results and would be inconsistent with established case law.

In *Mount Spokane Skiing Corp. v. Spokane County*, 86 Wn. App. 165, 936 P.2d 1148 (1997), the Court addressed a statute that said a government entity was authorized to:

> (4) Create public corporations, commissions, and authorities to: Administer and execute federal grants or programs; receive and administer private funds, goods or services for any lawful public purpose; ***and*** perform any lawful public purpose or public function.

Mount Spokane Skiing Corp. 86 Wn. App. at 172-73 (emphasis added). In that case, the plaintiff argued that a public authority was improperly created because it failed to meet all the requirements of RCW 35.21.730(4), specifically, that because the word "and" connects the three listed functions of a public corporation, that all three functions must be undertaken by the municipal corporation. *Id.* at 173. However, this Court rejected the plaintiff's argument holding that "[t]he disjunctive 'or' and conjunctive 'and' may be interpreted as substitutes." *Id.* at 174 (citing *State v. Tiffany*, 44 Wn. 602, 604, 87 P. 932 (1906)). The Court noted in its decision that,

> It is clear from a plain reading of the statute that the powers listed in paragraph (4) are the possible functions a public corporation may undertake. Nowhere does it appear from the statutory language that the corporation must undertake each and every function in order to be valid and legal. Nor does such an interpretation comport with common sense. Based upon the plain language and intent of the statute, a public corporation

> may undertake one or more of the functions listed in paragraph (4).

Id. at 174.

The Supreme Court has come to the same conclusion in *CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997). In *CLEAN*, the Court interpreted RCW 35.21.730, which allows cities to create public corporations "to improve the administration of authorized federal grants or programs to improve governmental efficiency and services, or to improve the general living conditions in the urban areas...." *CLEAN*, 133 Wn.2d at 473. The statute used the word "and" in setting forth three functions of a Public Development Authority, and the argument before the Court was that the Spokane Public Development Authority violated the law because it was not performing *all* of the listed functions. *Id.* The Court found however that,

> The plain language of the statute states that a city 'may' create a public corporation for these varied purposes. Although it is true the word 'and' appears in the statute, all three statutory elements need not be present for a PDA to be acting lawfully.

Id. at 473-74.

In *Bullseye Distributing LLC v. State Gambling Com'n*, 127 Wn. App. 231, 110 P.3d 1162 (2005), this Court examined RCW 9.46.0241 which defined a "gambling device" and within the definition used the

word 'and.' There, the defendant argued that the statute contained four elements, all of which must be met for a machine to qualify as a gambling device. *Bullseye*, 127 Wn. App. at 237. However, this Court held that "[a]lthough the statute is not written in the disjunctive, we hold that it contains four separate definitions of 'gambling device.'" *Id.* at 238-39. The Court found the statute was unambiguous in defining four separate devices, any one of which qualified as a 'gambling device.' *Id.* at 240.

Based on the decisions discussed above, it is clear that the legislature's use of the word "and" in RCW 9.94A.030(20) simply means that in order to qualify, the crime must meet either the definition in RCW 10.99.020 or the definition in RCW 26.50.010. Either is sufficient. Both of these definitions are independently sufficient, and a crime that qualifies under either definition is considered a crime of domestic violence under RCW 9.94A.030(20). As in the *Bullseye* case, this Court should find that RCW 9.94A.030(20) is unambiguous in defining two separate definitions of domestic violence.

As the trial court correctly interpreted RCW 9.94A.030(20) and Walls' other convictions are domestic violence offenses, the trial court correctly included them in his offender score. Walls received a proper sentence and the trial court should be affirmed.

D. CONCLUSION

Walls' narrow interpretation of RCW 9.94A.030(20) is not supported by the rules of statutory construction or case law. The trial court properly interpreted RCW 9.94A.030(20) and properly calculated Walls' offender score. The trial court should be affirmed.

DATED this 10 day of July, 2014.

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May 16, 2014 - 1:33 PM

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